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Paper No. 13

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**COPY MAILED**

JUL 15 2005

**OFFICE OF PETITIONS**

In re Application of

Randi Lynn Schindler

Application No. 09/152,992

Filed: September 14, 1998

: Decision

: On

: Access

This is in response to a petition filed May 16, 2005, under 37 CFR 1.14 by Marvin H. Kleinberg on behalf of Kleinberg & Lerner, LLP, for access to the above-identified application on May 16, 2005. In response to a three week letter mailed June 7, 2005, David L. Hoffman filed a letter on behalf of applicant opposing granting access on June 28, 2005.

The petition is **DISMISSED**.

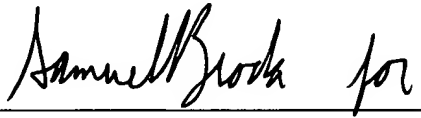
The petition requests access to the above referenced application based upon the special circumstances that petitioner is being "...sued for malpractice in connection with ... representation of the inventor..." It appears from page 2 of the attachment to the petition that the representation involved the above referenced application.

Applicant opposes granting access stating that confidentiality will be lost if access is not done through the discovery process.

When a matter is in litigation, the PTO generally leaves the decision as to whether and under what conditions one litigant should have access to another's application up to the discretion of the court in which the matter is being addressed. No "special circumstances" have been identified which would warrant not deferring to the court's discretion in the matter in litigation.

Accordingly, the petition is dismissed.

Telephone inquiries regarding this decision should be directed to Samuel Broda at (571) 272-7711.

Handwritten signature of Samuel Broda in cursive script, followed by the word "for" in a similar style.

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

cc: Randi Black  
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